IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-

SECRETARY OF PUBLIC WELFARE, Commonwealth of Pennsylvania; JOHN FONG, Director of Haverford State Hospital; NICHOLAS D'ALUSIO, Director of Polk State School and Hospital; C. DUANE YOUNGBERG, Director of Pennhurst State School and Hospital, sued as representatives of all others similarly situated,

Appellants

v.

INSTITUTIONALIZED JUVENILES in Pennsylvania institutions for the mentally ill and the mentally retarded, namely, KEVIN S.; RICHARD S.; JAMES PAUL M.; EDWARD B.; RAYMOND C.; THOMAS W.; WILLIAM B.; FRANCIS B.; MARIA L.; NANCY LOUISE D.; GINA S.; GEORGE S., by their next friend and guardian ad litem, David Ferleger, individually and on behalf of all others similarly situated,

Appellees

On Appeal from the Judgement of the United States District Court for the Eastern District of Pennsylvania

MEMORANDUM OF APPELLEES

Appellees, by their counsel and guardian ad litem, respectfully submit the following in response to the appellants Jurisdictional Statement:

1. This appeal is from the judgment of the Three-Judge District Court entered pursuant to the opinion and judgment of this Court in Kremens v. Bartley, 431 U.S. 119 (1977).

2. The appellees believe that the decision of the lower court after

remand is correct and should be affirmed.

3. No person may be committed indefinitely to a mental institution, and subjected to the stigma and the risks of institutionalization, without due process procedures, including counsel and a hearing. Involvement of parents or guardians in the commitment of juveniles does not eliminate or alter the need for such procedures. The district court's detailed factual findings and legal conclusions should not be disturbed. There is no conflict among the circuits on these issues; the questions presented by appellants are insubstantial, in the view of appellees.

4. However, realistic consideration of this Court's previous action in Kremens v. Bartley, supra, and in Parham v. J.L., No. 75-1690, indicates that it is extremely unlikely that the present judgment will be summarily affirmed. Appellees therefore set forth below their views on the relationship between the instant case and the Parham case.

5. It is respectfully submitted that the disposition of Parham v. J.L., to be reargued next Term, cannot affect the need for plenary review of this case for the following reasons:

a. In this case, the lower court specified due process procedures; the Parham court mandated no definite procedures.

b. This case involves both the retarded and mentally ill; the Parham case involves only the mentally ill.

c. The defendants in this case include directors of state-owned and state-licensed facilities, all required to act under the challenged state commitment laws; Parham appears to involve only state-owned facilities.

d. At issue in this case is the power of the lower court to provide relief to plaintiff class members presently institutionalized; this issue is absent from Parham.

6. Whether the lower court's judgment in Parham v. J.L. is affirmed or reversed, issues in the present case will remain to be decided. To the extent similar legal questions are raised in both cases, it would be quite appropriate in the interests of justice for this Court to hear and consider the instant case at the time it hears and determines the Parham case.

WHEREFORE, appellees respectfully submit that, should the judgment below not be summarily affirmed, this case should be reheard in connection with the reargument in Parham v. J.L., No. 75-1690.

Respectfully submitted,

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May 30, 1978